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RUCNDT/USMISSION USUN NEW YORK 2458

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SUBJECT: KAZAKHSTAN: TRIAL COURT HANDS DOWN GUILTY VERDICT IN HUMAN RIGHT'S ACTIVIST YEVGENIY ZHOVTIS' CASE; APPEAL LIKELY

REFTEL: ASTANA 1468

¶1. (U) Sensitive but unclassified. Not for public Internet.

¶2. (SBU) SUMMARY: On September 3, a Kazakhstani district court sentenced human rights activist Yevgeniy Zhovtis to four years imprisonment for criminal negligence in connection with a vehicular accident. Zhovtis' legal team is expected to appeal. Several media outlets and many in the human rights and civil society community, including Zhovtis himself, expressed disappointment that the judge rushed the two-day trial and denied most of the defense's motions, including a request for independent expert testimony. On August 26, Zhovtis told PolOff that his case may have been politically motivated and was "moving too quickly." He stressed that he was not given adequate time to prepare a defense. Post consistently has emphasized to Kazakhstani interlocutors the importance of a transparent, fair, apolitical process (reftel). END SUMMARY.

COURT HANDS DOWN GUILTY VERDICT

¶3. (SBU) On September 3, the Balkhash district court sentenced NGO director of the Human Rights Bureau and Kazakhstan's most prominent human rights activist, Yevgeniy Zhovtis, to four years imprisonment in a penal colony for a violation of the road traffic and vehicle operation rules leadingLQmRcQq that the jud:QBQ@OpDi_,'`q91E~en Zhovtis struck and killed a pedestrian with his car on a rural road while returning to Almaty. In his report to the police, Zhovtis said he was blinded by oncoming traffic and did not see the pedestrian until it was too late to avoid him. The investigation confirmed that Zhovtis was driving within the speed limit. It also showed that his alcohol-blood level was 0.046, a level that can result from taking certain medicines or drinking fermented milk products.

FORMALLY CHARGED ON AUGUST 14

¶6. (SBU) Zhovtis was formally charged on August 14, after the police investigation found him criminally negligent for failing to slow down when he was blinded by oncoming traffic. Zhovtis has publicly contested the police's assessment, arguing that he did not have enough time to react. According to Vera Tkachenko, a civil society activist and Zhovtis' "voluntary defender," he reached a

mutually-agreeable settlement with the deceased's family, who forgave him and opted not to press charges. Since this is a criminal case, however, the Prosecutor General's Office (PGO) used its prerogatives to proceed even though the victim's family apparently did not press charges. Zhovtis faced up to five years in prison.

CASE POLITICALLY MOTIVATED?

¶7. (SBU) At an August 25 press conference, Zhovtis' lawyer Sholpan Batkalova said that she considered the charges "illegal and unjustified." She noted that the PGO named Zhovtis a suspect, rather than a witness, on July 28, but he and his lawyers were not notified until August 15. Zhovtis himself stated at a press

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conference that he suspected someone "ordered the case" against him. "Attempts are being made to curtail my movements and prevent me from speaking out," Zhovtis said, referring to a travel ban imposed on him for the duration of the investigation and trial.

SHORT-NOTICE TRIAL

¶8. (SBU) On August 26, Zhovtis received formal notification that his trial would begin the next day, August 27, in the village of Bakanas -- 200 kilometers from Almaty. Zhovtis confirmed to PolOff that although the court changed his status from witness to suspect on June 28, he was not notified until August 14. On August 20, he was informed his trial would begin on August 27. He stressed that he was not given enough time to prepare a defense. He noted that both of his lawyers were busy with other cases and could not attend the session on such short notice. He also pointed out that two of his motions -- to conduct a new technical examination of the accident and to stop the criminal case pending the outcome of this assessment -- had been denied. Zhovtis argued to the PGO that he should have three days to contest the denial of the motions, but the prosecutor did not consider his arguments.

¶9. (SBU) At the August 27 court session, Zhovtis, representing himself, successfully argued for the adjournment of the case until September 2. However, the judge denied his motion to lift the travel ban and hold pre-trial proceedings, insisting that the trial would begin on September 2. Post's locally-employed Almaty political assistant attended the court session. In his comments afterwards, Zhovtis criticized the judge for "lack of professionalism," noting that the judge ignored procedural violations made by the investigator and the district prosecutor.

INTERNATIONAL COMMUNITY SHOWS ITS SUPPORT

¶10. (SBU) Local and international human rights activists organized a committee to monitor the proceedings against Zhovtis. In a public statement on August 24, the committee called on the authorities to "treat the case in an unbiased and objective manner." "Evgeniy Zhovtis has been known as an ardent human rights activist and an impartial and sincere critic of the state power," read the statement, "that is why we have asked the authorities of the Republic of Kazakhstan to prevent any possible pressure on the investigators and the courts in connection with this case." The committee was initiated by two Moscow-based human rights activists, Inessa Frants and Vitaliy Ponomaryov. The committee's public statement was signed by over 70 individuals and organizations, including Human Rights Watch, Helsinki Committee of Norway, and various organizations in Central Asia.

¶11. (SBU) In an August 26 interview with the newspaper "Vremya," the head of the OSCE Center in Astana, Alexandr Keltchewsky, warned that any attempt to exert pressure on Zhovtis "will damage Kazakhstan's interests and undermine its image." He added that if Zhovtis is prevented from attending the annual Human Dimension Implementation Meeting (HDIM) in Warsaw on September 28, then "certain political conclusions - negative for Kazakhstan - will be made."

FIRST DAY OF TRIAL: COURT DENIES DEFENSE'S MOTIONS

¶12. (SBU) On September 2, the first day of Zhovtis' trial, the judge turned down several defense motions, including a request that independent technical experts present evidence. In a September 2 Vremya newspaper article, Zhovtis said, "First and foremost, I would like to extend my sincere condolences to the victim's family. From the point of view of the law, I did not break any traffic laws, as two independent analyses made clear. These documents prove my innocence, which is why I am going to court well-prepared. However, the way the investigation ended and the court hearing began leaves me little hope. There have been so many violations of legal procedure, that it is very difficult to predict the outcome of the hearing. If it goes the same way, then it will be difficult to prove my innocence."

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TRIAL CONCLUDES ON SECOND DAY

¶13. (SBU) On September 3, the second day of Zhovtis' trial, five National Forensic Center experts testified. According to Post's political assistant, who observed the proceedings both days of the trial, Zhovtis' lawyers questioned the experts on several inconsistencies in their remarks. Human Rights Watch representative Iva Dobichina and Post's political assistant observed police enter the court-room before closing arguments, and correctly predicted that the trial would conclude with a guilty verdict and Zhovtis' arrest by the end of the day.

SIMILAR CASE PRESAGES THE ZHOVTIS VERDICT

¶14. (SBU) The guilty verdict was widely expected by Zhovtis and others in the civil society community -- especially after an Almaty court sentenced print reporter for "Vremya" newspaper Tokhniyaz Kuchukov to four years imprisonment for vehicular manslaughter in a very similar case on August 28. Zhovtis told PolOff on August 28 that he believed the Kuchukov ruling was designed to establish a precedent for his case. On September 3, a Vremya article entitled "Under the Wheels of Justice," quoted Zhovtis as saying that "Kuchukov was most likely put in jail [for vehicular manslaughter] because of me." In this article, Zhovtis also stated that he believes an unspecified "third party" has interfered in his case. The article quoted Zhovtis' descriptions of "major violations" of the law in the conduct of the trial. Radio Azattyk (RFE/RL) quoted Zhovtis' lawyer Vitaly Voronov, who said the judge broke the law by not immediately approving the defense's motions. Peter Svoik, the Deputy Chairman of the Azat opposition party, also published an article condemning Zhovtis' trial as an "illegal process."

¶15. Post has issued a statement on its website ([put link here](#)) and has received numerous inquiries from local human rights organizations. Text of the statement follows:

U.S. EMBASSY STATEMENT ON THE CONVICTION OF YEVGENIY ZHOVTIS

On September 3, internationally-recognized human rights advocate Yevgeniy Zhovtis was convicted by a trial court of criminal negligence leading to grave consequences and sentenced to four years in a penal colony.

In recent days, we have expressed our concerns about this case and urged the Kazakhstani authorities to provide Mr. Zhovtis access to fair legal proceedings, consistent with Kazakhstani law. We will continue to make the same request during the appeals process.

We note that there will inevitably be intense international scrutiny placed on how the appeals process will be conducted because of Mr. Zhovtis' prominence in the international human rights community and as Kazakhstan prepares to assume the Chairmanship of the Organization for Security and Cooperation in Europe in 2010. END TEXT.

¶15. (SBU) COMMENT: The accident in which Zhovtis struck and killed a pedestrian was certainly unfortunate for everyone involved. The activist himself publicly expressed deep regret and sought redress with the victim's family, as is often done in Kazakhstan. Post does not believe that Zhovtis was set up, but will analyze reactions to

the trial procedures. We understand Zhovtis' legal team will appeal the verdict. Following the accident, Post repeatedly urged its interlocutors in the government of Kazakhstan to follow Kazakhstani laws and act in accordance with international standards. Post has emphasized to its interlocutors that this case has generated a considerable amount of international attention, and if any actions were taken that are not in complete accordance with Kazakhstani law, the situation would reflect poorly on Kazakhstan. The Ambassador raised the case with Deputy Foreign Minister Zhigalov on September 2 emphasizing the importance of a fair, transparent, non-politicized trial (reftel). END COMMENT.

HOAGLAND